

Senate Bill 370  
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**Introduction.**

The Big Hole River has been identified as one of the last strongholds of fluvial Arctic grayling in the continental United States. The population has declined to the point that the US Fish and Wildlife Service (USFWS) has identified it as a candidate for listing under the Endangered Species Act. It has yet to be listed, but there is litigation pending on the issue and listing is possible.

To provide some protection for landowners in the upper Big Hole who are working cooperatively to restore grayling habitat, the USFWS and the Montana Department of Fish, Wildlife, and Parks (DFWP) has established a basin-wide program using Candidate Conservation Agreements with Assurances (CCAA). Sanctioned by federal regulation, CCAAs provide incentives to landowners to undertake conservation measures for the benefit of species that are "proposed for listing or that are candidates for listing" under the Endangered Species Act. Landowners who enter into and implement a CCAA are protected from having to initiate further conservation efforts if the species is listed and are also protected from charges of taking endangered species in violation of the Endangered Species Act.

**The Problem.**

Water rights are use-based, meaning that extended periods of non-use can leave a right open to a charge that the right has been abandoned.

In the upper Big Hole, the conservation measures include improvement of stream flows through a variety of irrigation management strategies. Some of these strategies will require formal Department of Natural Resources and Conservation (DNRC) review of the activity to assure the change is legally protected in the administration of water rights in the basin, which automatically protects a water right from abandonment. Some of these strategies may be as informal as reduced diversions in critical periods, or modifications in scheduling of diversions. Some water users are concerned that if they participate in CCAAs, their participation in water conservation measures may open them to claims that, by so doing, they are abandoning their water rights. For the water management strategies to work, it is important to assure water users working under CCAAs that their water rights will not be abandoned if they reduce their diversions under a CCAA.

**The Solution.**

Senate Bill 370 provides the assurance that irrigators working on conservation measures through the CCAAs will not face any threat of abandonment of their water rights. Current statute already provides explicit protection from abandonment for set-aside programs such as CRP. (see §85-2-404(3), MCA). The proposed legislation would provide similar protection for water users participating in the CCAAs by amending 85-2-404(3), MCA.

Trout Unlimited urges the Committee to support passage of Senate Bill 370.